

Judicial Redistricting Commission
9/3/15

From: Linda Gryczan
President, Montana Mediation Association (MtMA)

Re: The use of mediation to decrease court load

1. MtMA has certified 50 mediators, concentrated in Western Montana, primarily in Missoula, Helena and Bozeman, with a growing number in Kalispell and Billings.

a. most of these have additional family designation which means they have additional training and certification to mediate divorces and parenting plans.

2. Most mediation in Montana is evaluative or facilitative

a. Evaluative is primarily practiced by attorneys. The purpose is to have a legally defensible agreement. The clients are typically in separate rooms, the mediator does shuttle diplomacy, carrying offers and counter offers back and forth. The clients often stay until they reach impasse or agreement. It is a more directive process with the mediator evaluating what Judge X would think of the parties' settlement.

b. Facilitative is primarily practiced by mediators who come to the practice from a therapy, social work or teaching background. Some facilitative mediators are also attorneys. Unless there is a power imbalance or safety concern (domestic violence), the parties are in the same room. The mediator facilitates the conversation, helping the parties come to their own best agreement. If the mediator has an opinion about the agreement, it is considered irrelevant. There are typically several 2-3 hour meetings with the parents seeking legal and financial advice between meetings to better inform their decisions.

A facilitative mediator works to deescalate any past conflict. In the case of a parenting plan, this can include:

- * sending parents to uptoparents.com where they learn the effect of parental conflict on children.
- * having parents bring pictures of children to put in the middle of the table.

- * talking about what makes Junior special and agreeing on mutual goals for Junior's future.
- * listing 10 positive qualities or memories about the other parent that they promise to tell Junior. Telling these 10 things to each other at the beginning of the mediation.

3. Parents can come to complete agreement and have a court ready document using Montana's pro se paperwork. If working with a non-attorney mediator, they will take their agreements to separate attorneys before signing anything.
4. If parents have a complete agreement, they bring their paperwork to the court and schedule a 15-minute hearing—often on the same day.
5. If parents have no agreement, a half-day hearing is scheduled months in advance.
6. 1st Judicial District judges report that there are roughly 1,000 divorces in the Helena area each year. Each mediated divorce where the parents come to agreement on their own, saves a half-day in the courtroom. Even partial agreements shorten the hearing time, and save the Court time and money.

I apologize that recent surgery is keeping me from presenting this information to you in person. Please feel free to contact me with any concerns or questions.

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President

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